

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Robert J. TOMBARI 575158 & 257629

DECISION OF THE VICE COMMANDANT ON REQUEST
FOR A TEMPORARY LICENSE

2467

Robert J. TOMBARI

This request for issuance of a temporary license has been accepted and reviewed in accordance with 46 U.S.C. SS7701 and 46 CFR SS5.701.

By order dated 4 November 1987, an Administrative Law Judge of the United States Coast Guard at New York, New York, suspended outright Appellant's license for twelve months and for a further twelve months on probation upon finding proved a charge of negligence. The negligence charge was supported by a single specification which alleged that Appellant, while serving as Chief Engineer aboard the R/V ENDEAVOR on or about 11 August 1986, negligently failed to ensure that safety precautions, such as (1) that the connections were in fact completed at the connection box aboard the vessel; (2) that shore power was available as indicated at the distribution panel; (3) that the connections at the shore side connection box were properly completed; (4) that communications between the [Appellant] and his subordinates verified that the ship was ready to receive shore power; (5) that the subordinate engineers aboard the vessel were aware that the evolution was about to take place; the evolution specifically being the shifting of ship's power to shore power, were taken prior to directing the shifting of the electrical load from the ship's power to shore power, which resulted in the death of Miss Alison Rollins, who was serving as an engineer aboard the R/V ENDEAVOR on the day in question.

On 16 December 1987, Appellant filed a notice of appeal and on 29 January 1988 requested a temporary license pending appeal. The Administrative Law Judge having retired and the hearing transcript having been forwarded to the Commandant, the request

is properly before the Vice-Commandant for final agency action in accordance with 46 CFR 1.10(b) and 46 CFR 5.707(b).

BASES OF REQUEST

Appellant has not filed a brief in support of his request, however he references his letter of 16 December 1987 as setting forth the grounds for his request. A request for a temporary document is governed by the provisions of 46 CFR 5.707(c), which provides:

(c) A determination as to the request will take into consideration whether the service of the individual is compatible with the requirements for safety at sea and consistent with applicable laws. If one of the offenses enumerated in [46 CFR] 5.61(a) has been found proved, the continued service of the appellant will be presumed not compatible with safety at sea, subject to rebuttal by the appellant.

APPEARANCE: James T. Murphy, Esq.

OPINION

The issue to be decided in granting or denying a request for a temporary license is not whether the Appellant was negligent, but rather whether continued service of the Appellant pending the outcome of his appeal is compatible with the requirements for safety at sea and consistent with applicable laws. Since Appellant has not been found to have committed "one of the offenses enumerated in 46 CFR 5.61(a)", a presumption of incompatibility does not arise in this case. A review of the record is required with the primary consideration remaining safety at sea. Appeal Decision 2343 (WILLIAMS); Appeal Decision 2405 (LEON); Commandant v. Amoury, NTSB Order No. EM-94 (1981); Commandant v. Lyons, NTSB Order No. EM-141 (1987).

Here, Appellant was severely affected by the death of Miss Rollins. As a result Appellant was referred to psychotherapy for depressed mood, difficulty concentrating, and ruminative preoccupation with the accident according to his treating psychologist. In a letter written to Appellant's counsel dated 24 August 1987, the treating psychologist made the following comments:

"On initial interview, [Appellant] presented with all of the above depressive symptoms, and also reported poor sleep, emotional lability (mood swings), irritability, and unfocused anger. All these difficulties were directly related to the tragic death of one of his subordinates aboard his ship. Feelings of grief, remorse, and sadness were predominant. His emotional distress at that time was exacerbated by the fear and insecurity related to the possible loss of his job, possible legal action against him, and the uncertainty of his future.

"The diagnoses were major Depressive Disorder, and Post-Traumatic Stress Disorder.

"[Appellant] has been seen in individual psychotherapy on a weekly basis, with occasional brief breaks caused by his being out at sea. We have had 17 sessions to date....The events of the past 12 months have placed a severe emotional strain on [Appellant]....The memory of the accident plus the chronic strain of the ensuing legal process also exacerbated pre-existing marital difficulties, which added to his distress.

"[Appellant] has shown a strong commitment to therapy, and to date he has made very satisfactory progress in most areas. His depressive symptoms have abated for the most part, his coping mechanisms are stronger....His self-esteem remains a problem, however, mainly due to his overly-critical attitudes about himself and the exceedingly high expectations he has of himself. Marital difficulties continue, and the possibility of divorce has come into play.

"In his present state of mind, I believe [Appellant] is fully competent to work. The prognosis for a full recovery from the presenting symptoms is very good."

I note that this letter was offered by Appellant at the suspension and revocation hearing as mitigating evidence, however it was not admitted by the ALJ since portions of the letter had been deleted. See Respondent's Exhibit KK. Appellant has offered no other grounds in support of his request for a temporary license. Appellant refers to his letter of 16 December 1987 in support of his request. However, upon review of that document I find no facts or arguments that support Appellant's request by way of evidence showing that granting the request is compatible with safety at sea and consistent with applicable laws. Respondent's Exhibit KK is the only evidence in the record concerning Appellant's capability to serve under the authority of

his license with respect to the safety of life and property at sea.

The exhibit states that Appellant had made "very satisfactory progress" during the 17 sessions "in most areas". No evidence has been presented that Appellant is fully recovered. Marital problems continue according to the psychologist, with the prospect of divorce coming into play. The psychologist states that the chances for full recovery are very good. Appellant may expect to face additional emotional problems in the future. The psychologist states that Appellant is fully competent to work, but fails to qualify this statement to specify that Appellant is qualified to work under the authority of his license. Clearly, Appellant may be extremely well qualified to work in positions not requiring the holding of a merchant mariner's license. However, something more is required to ensure the safety of passengers, crew, and vessel before a temporary license can be issued in this case.

The very highest standard of care is placed on vessel officers for the personal safety of passengers and crew. Appeal Decision 2257 (MALANAPHY). It remains the policy of the Coast Guard that no one who is determined to be suffering from a psychological or psychiatric disability should be permitted "to serve aboard any vessel ... in any capacity in which he could cause serious harm to himself, to others, or to the vessel itself." Appeal Decision 2181 (BURKE), modified sub nom. Commandant v. Burke, NTSB Order No. EM-83 (1980); Appeal Decision 2417 (YOUNG).

CONCLUSION

With the given diagnoses and the potential for recurring problems, I find that Appellant's judgment as an engineer could still be affected by his current emotional condition even considering the progress made as discussed by his psychologist. Even the slightest lapse of attention, bout of depression, or inability to cope with these problems could have catastrophic results if encountered on the high seas. Therefore, continued service is incompatible with the requirements for safety at sea and is inconsistent with applicable laws.

ORDER

Appellant's request for a temporary license pending the appeal of the Administrative Law Judge's Decision and Order is

hereby DENIED. This denial constitutes final agency action in this matter and Appellant's appeal rights are set forth at 46 CFR 5.713.

CLYDE T. LUSK, JR
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C. this 12th day of July 1988.

3. HEARING PROCEDURE

.103 Temporary License/Document

bases for issuance of

10. MASTER, OFFICERS, SEAMEN

.17 Licenses

temporary, bases for issuance of

Appeal Decisions Cited: 2257 (MALANAPHY); 2181 (BURKE); 2417 (YOUNG); 2343 (WILLIAMS); 2405 (LEON).

NTSB Cases Cited: Commandant v. Burke, NTSB Order No. EM-83 (1980); Commandant v. Amoury, NTSB Order No. EM-94 (1981); Commandant v. Lyons, NTSB Order No. EM-141 (1987).

Federal Cases Cited: None.

Statutes Cited: None.

Regulations Cited: 46 CFR 1.10(b), 46 CFR 5.707(b), 49 CFR Part 825.

***** END OF DECISION NO. 2467 *****